

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

Christopher Humbert,

Plaintiff,

v.

Robert Sillemmon, et al.,

Defendants.

No. 6:21-cv-00257

TM Express, Inc.,

Counterclaim Plaintiff,

v.

United States of America,

Counterclaim Defendant,

Notice of Removal

Counterclaim Defendant United States of America, by and through its undersigned counsel, hereby files this Notice of Removal with this Court removing the above-entitled action now pending as Cause No. 321,734-B in the 146th Judicial District Court, Bell County, Texas. In support of this Notice of Removal, the United States avers as follows:

1. On December 23, 2020, this action was filed as *Christopher Humbert v. Robert Sillemmon, Individually as a Representative of Estes Express Lines, Estes Express Lines, Kimberly Dominique Austin as Representative of the Estate of John Davis, Deceased, Individually and as Representative of TM Express, Inc., and TM Express*, Cause No. 321,734-B, 146th Judicial District Court, Bell County, Texas. A true and correct copy of Plaintiff's Original Petition is attached hereto as ***Exhibit 1***.

2. On February 11, 2021, Defendant TM Express, Inc. filed a counterclaim against Plaintiff Christopher Humbert. A true and correct copy of TM Express, Inc.'s Counter-Claim Against Christopher Humbert is attached hereto as ***Exhibit 2***. Defendant TM Express, Inc. also

filed a crossclaim against Defendants Robert Sillemmon and Estes Express Lines. A true and correct copy of TM Express, Inc.'s Cross Claim Against Robert Sillemmon and Estes Express Lines is attached hereto as ***Exhibit 3***.

3. At the time of the motor vehicle accident that forms the basis of this lawsuit, Plaintiff Christopher Humbert was a federal employee acting within the scope of his employment, as set forth in the certification executed pursuant to 28 U.S.C. § 2679(d)(2) and 28 C.F.R. § 15.4 that is attached hereto as ***Exhibit 4***. As a result, the United States of America must be substituted as the counterclaim defendant in this action under the Federal Tort Claims Act.

4. This Notice of Removal is made pursuant to the Westfall Act, which provides in relevant part as follows:

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

28 U.S.C. § 2679(d)(2).

5. Pursuant to the provisions of 28 U.S.C. § 1446(d), the United States will give written notice to all parties and file a copy of the notice with the clerk of the State court. A true and correct copy of that notice is attached hereto as ***Exhibit 5***.

6. As required by Local Court Rule CV-3(a), a JS 44 Civil Cover Sheet and Supplement to JS 44 Civil Cover Sheet for Cases Removed from State District Court are attached hereto.

WHEREFORE, Counterclaim Defendant United States of America provides this Notice that the above-entitled action now pending as Cause No. 321,734-B in the 146th Judicial District Court, Bell County, Texas is hereby removed to this Court.

Respectfully submitted,

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United States Attorney

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Certificate of Service

I certify that on March 12, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system and also served this document upon all counsel of record via first class U.S. mail and email addressed as follows:

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